



California Fair Political Practices Commission

February 9, 1988

Mark G. Sellers
City Attorney
City of Thousand Oaks
P.O. Box 1496
Thousand Oaks, CA 91360

Re: Your Request for Advice
Our File No. I-88-026

Dear Mr. Sellers:

You have requested advice concerning the responsibilities of a local group, which is seeking a public vote on a city issue, to comply with the campaign disclosure provisions of the Political Reform Act (the "Act").^{1/} The Fair Political Practices Commission provides advice to persons whose duties under the Act are in question. Because you are not seeking advice on behalf of a person who has duties under the Act, this letter constitutes informal assistance under Regulation 18329.^{2/}

QUESTION

Does a group have a campaign disclosure responsibility if it raises and spends money to circulate a petition which would place an "advisory" vote on the ballot?

CONCLUSION

There is no campaign disclosure requirement for disclosure of payments received and made for or against a city policy question until a "measure" has been ordered to be placed on the ballot by a city council.

^{1/}Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

^{2/}Your letter states only a general question. Therefore, we consider it to be a request for informal assistance pursuant to Regulation 18329(c) (copy enclosed). Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 84113; Regulation 18329(c)(3).)

FACTS

A group had been formed in your City which is seeking to have a public advisory vote placed on an election ballot. The group is circulating a statutory initiative petition to require that an advisory vote be placed on the ballot. Your interpretation of the Election Code is that only a legislative body, in this case the city council, has the authority to place an "advisory" vote on an election ballot. The petition being circulated does not qualify as an initiative petition, and the city council has no obligation to place the issue on an election ballot.

ANALYSIS

The Act defines a measure as:

...any constitutional amendment or other proposition which is submitted to a popular vote at an election by action of a legislative body, or which is submitted or is intended to be submitted to a popular vote at an election by initiative, referendum or recall procedure whether or not it qualifies for the ballot.

(Section 82043.)

The group is seeking to have the city council place a question on an election ballot. Although an initiative petition is being circulated to accomplish this purpose, the petition does not qualify as a true initiative because the proposal is for an "advisory" public vote. Therefore, the city council has the discretion to submit or to not submit the issue to the voters.

Since the petition is not an initiative, there is no disclosure obligation for the money received or spent on behalf of the petition circulation effort. Prior to the issue being placed on the ballot by the city council, the group has no campaign reporting obligation. (In re Fontana (1976) 2 FPPC Opinions 25.)

If the city council places the issue on an election ballot, even if the vote result would be "advisory" to the city council, then all contributions and expenditures made for the purpose of influencing the voters for or against the measure may have to be disclosed on campaign statements. (Sections 82043, 82015, 82025, 84200 and 84200.5) In addition, if the group provides to any other committee anything of value, such as research or opinion poll results, which was obtained prior to the time that the city council places the issue on the ballot, then the fair market value of the items must be reported as nonmonetary contributions. (Section 82015 and Carmody Advice Letter, No. A-87-191, copy enclosed.)

Mark G. Sellers

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If you have any questions regarding this advice letter, please feel free to call me at (916) 322-5662.

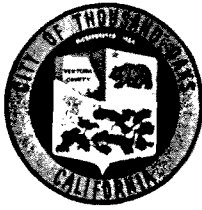
Sincerely,

Diane M. Griffiths
General Counsel

A handwritten signature in black ink, reading "Bruce W. Robeck". The signature is written in a cursive, flowing style.

By: Bruce W. Robeck
Political Reform Consultant

DMG:BWR:kmt



City of Thousand Oaks

401 WEST HILLCREST DRIVE • POST OFFICE BOX 1496 • THOUSAND OAKS, CALIFORNIA 91360 • (AREA 805) 497-8611

MARK G. SELLERS
CITY ATTORNEY

January 4, 1988

Jeanne Pritchard
Technical Assistance Division
Fair Political Practices Commission
428 J Street
Suite 800
Sacramento, California 95814

Re: Filing of Statement of Organization for Group
Circulating Petition for a Local Advisory Measure

Dear Mrs. Pritchard:

Pursuant to my telephone conversations with and instructions from Marguerita Altamirano of the Legal Division, I would like your agency's opinion as to whether a group (the "Pride" group in this situation), circulating a petition asking for a local "advisory" ballot measure must file a statement of organization under the Fair Political Practices Act.

On or about August 1987, the Thousand Oaks City Clerk received a Notice of Intent to Circulate Petition for placing on the June 7, 1988 ballot "an advisory vote" on the following matter:

Shall the City of Thousand Oaks submit for voter approval the Jungleland redevelopment project estimated to cost \$40 million in public money which may include a cultural center/civic auditorium, hotel and conference center and office building. YES or NO?

Since that time, this group has actively circulated this petition in addition to spending money for stationery, postage, and legal advice. Government Code Section 84101 requires that a Statement of Organization be filed by any committee within ten days after the committee sponsoring or opposing a ballot measure has received contributions totaling \$500.00 or made expenditures totaling \$500.00 or more in a calendar year. This group may have spent, or will spend, more than \$500.00 on this effort and has not made any filings.

The initiative process is for enacting laws or local ordinances (see Election Code Section 4000). Pursuant to Election Code Section 5353, "advisory" ballot measures require a sponsoring legislative body and are not the described subject matter for the initiative process. Even if the Pride group obtains enough signatures called for under state law for initiatives and requests the City Council to place the matter on the ballot, the City Council is not obligated by law to place this measure on the ballot. The petition being circulated by this group would be no different than any other petition that may be submitted to the Council on this subject for purposes of showing public support. In fact, there is another group circulating a petition in support of this redevelopment project, which is not requesting the matter be placed on the ballot.

It is my understanding, as stated to me by Marguerita Altamirano, that it is the Commission's position that if the petition being circulated by this group is not required by law to be placed on the ballot by the City Council, regardless of the number of signatures obtained, then the statement of organization and other filings are not needed. This analysis certainly makes sense. In essence, the Pride group is nothing different than a lobbying group filing a list of names showing support for a particular course of action. The key fact for determining if a filing under the Fair Political Practices Act is needed is whether the proposed ballot measure must go on the ballot if a sufficient number of signatures are obtained.

However, some confusion exists because the Pride group has indicated they have obtained an oral opinion from Mr. Bruce Robeck of the Commission which concludes that they need not file a statement of organization or subsequent financial filings for a different reason. They state that because their petition is for a ballot measure which is only "advisory", but must be placed on the ballot, no filing is required. (See attached letter by Mr. Booker.) This letter is not consistent with statements made by Marguerita Altamirano. A distinction based on whether the advocating group supports an advisory ballot measure or binding ordinance does not make sense. It would seem that once a measure is placed upon the ballot, regardless of advisory or not, any group actively supporting or opposing the measure should file. In essence, the key factor at this early pre-ballot point in time is whether the petition requires under law that the Council place the matter on the ballot.

Please provide us with a written interpretation as to when a filing is required in this situation.

Very truly yours,



MARK G. SELLERS
City Attorney

PRIDE

Public Rights and Interest Duly Exercised

Nancy A. Dillon
City Clerk
City of Thousand Oaks
401 West Hillcrest Drive
Thousand Oaks, CA 91360

December 15, 1987

Dear Ms. Dillon:

May we refer you to Mr. Bruce Robeck of the Fair Political Practices Commission in Sacramento. He will confirm that the PRIDE ballot measure and the effort of the PRIDE committee to advance that ballot measure do not require a Statement of Organization or financial filings.

The PRIDE ballot measure is non-binding. It asks only for an expression of public opinion. It has no force of law. No ordinance will result. The activities of PRIDE to bring the Jungleland issue to the voters carry no reporting obligations.

Sincerely,

Dick Booker
Dick Booker
member, PRIDE

34200.5
41200.8
4303.5

Special Dir.
Marguerita
Altamirano
916-322-5901
CITY OF
THOUSAND OAKS
1987 DEC 15 PM 9:59



California Fair Political Practices Commission

January 11, 1988

Mark G. Sellers
City Attorney
P.O. Box 1496
Thousand Oaks, CA 91360

Re: 88-026

Dear Mr. Sellers:

Your letter requesting advice under the Political Reform Act was received on January 7, 1988 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5662.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to the information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,

Jeanne Pritchard
Chief
Technical Assistance and Analysis
Division

JP:plh



City of Thousand Oaks

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MARK G. SELLERS
City Attorney

jt:D8
Attach.

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